IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/08/2004

Coram

The Honourable Mr. Justice P.K.MISRA
and
The Honourable Mrs. Justice R.BANUMATHI

Writ Petition No.18782 of 2003

1. The State of Tamil Nadu,
rep. by Secretary to Government,
Animal Husbandry and
Fisheries Department,
Chennai - 9.

2. The Director of Fisheries,
Chennai 600 006. .. Petitioner

-Vs-

1. M. Noor Mohamed

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai - 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari as stated therein.

For petitioners: Mr. S.V. Durai Solaimalai
Government Advocate

For 1st respondent: Mr. M. Ravi

:O R D E R

(Order of the Court was
made by R.BANUMATHI, J).

This Writ petition is filed by the Government of Tamil Nadu/ Secretary to Animal Husbandry and Fisheries Department for setting aside the order passed by the Tamil Nadu Administrative Tribunal in O.A. No.375 5 of 2001 dated 10.7.2002 and holding that the first respondent is entitled to all monetary and service benefits during the period of absence from duty i.e., from 23.12.1980 to 6.9.1992.

2. When the Disciplinary Authority differs from the finding of the Enquiry Officer, whether non-affording of further opportunity by the Disciplinary Authority would vitiate the Disciplinary Proceedings is the main point arising for consideration. On the basis of the proved charges, the first respondent was dismissed from service with effect from 23.12.1980 to 6.9.1992. By the order of the Government, he was reinstated on 7.9.1992. Whether the period fr om 23.12.1980 to 6.9.1 992, during which the first respondent was being out of duty, is to be treated as the period of duty so as to entitle him to the monetary benefits is yet another point arising for consideration in this Writ Petition.

3. This Writ Petition arises on the following facts:-
The first respondent - Noor Mohamed, Junior Refrigeration Engineer had been previously working as a Junior Refrigeration Engineer from October 1969 to January 1975 at Portonovo under the control of the Fisheries Refrigeration Engineer, Madras. One E.J. Rajaratnam, the then Fisheries Refrigeration Engineer, Madras visited the Portonovo, and inspected the Ice Plant on 20.12.1973, and directed the Junior Refrigeration Engineer to replace Spray Nozziles and Pipes of the Cooling Tower.

4. Accordingly, the first respondent had called for quotations from different firms for fabrication of the Spray System of the Cooling Tower. Three quotations were obtained from different firms. However, the procedure in obtaining the quotation was not followed by the first respondent. In violation of the prescribed procedure for obtaining the quotations, the first respondent personally collected the quotations in a fraudulent manner with the connivance of K.N.R. & Co at Cuddalore and got it interpolated by correcting the quotations unauthorisedly to make it appear as if the quotation of K.N.R. & Co was the lowest. The work was entrusted to K.N.R. & Co., Cuddalore for supply of materials and fabrication of the Cooling Tower System. No prior approval was obtained from the Fisheries Refrigeration Engineer. Hence, charges were framed against the first respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. Originally, all the four charges were found proved and in his proceedings in R.C. No.L3/11812/85 dated 15.12.1986, the Director of Fisheries imposed the punishment of removal from service. Against that order, the first respondent preferred an appeal to the Government. The Government sought the view of Tamil Nadu Public Service Commission. The Commission advised the Government to set aside the orders of the Director of Fisheries removing the first respondent from service on the ground of non-communication of Enquiry Officer's Report to the first respondent. Accepting the Commission's advice, the Government issued orders in G.O.Ms.No.920, Forests and fisheries Department dated 1.9.1986 setting aside the orders of Director of Fisheries and directed the Director of Fisheries to make a de nova enquiry and issue fresh order rectifying the defects. After conducting such enquiry, and sending a copy of the Enquiry Officer's Report to the first respondent, the Director of Fisheries again issued orders in his proceedings No.L3/11812/85, dated 15.12.1986 removing the appellant from service with effect from 23.12.1980. Against that order, the first respondent has again preferred appeal to the Government.

6. The Government again consulted the Tamil Nadu Public Service Commission. The Commission felt that reasonable opportunity was not provided to the first respondent to defend himself in charges. The Commission was of the view that the ends of justice will be met only if one more opportunity is given to the first respondent to defend the charges levelled against him. The Commission has, therefore, advised the Government to set aside the orders of Director of Fisheries and to conduct an oral enquiry to give an opportunity to the first respondent to defend the charges. The Government in G.O.Ms.No.175, Animal Husbandry and Fisheries, dated 29.5.1992 have accepted the views of the Tamil Nadu Public Service Commission and set aside the orders of the Director of Fisheries, dated 15.12.1986 and directed the Director of Fisheries to conduct a de novo enquiry and p ass fresh orders after rectifying the defects. In accordance with the orders of the Government, Noor Mohamed was reinstated into service as Junior Refrigeration Engineer in the Ice Plant at Pazhayar on 7.9.1992 Fore Noon without prejudice to the disciplinary action initiated against him.

7. One A.J.Thangadurai, former Assistant Director of Fisheries (Regional), Chengalpet at Madras was appointed as Enquiry Officer to conduct oral enquiry and to submit his findings. The Enquiry Officer has conducted oral enquiry and personal hearing on 2.3.1993 and submitted his Enquiry Report on 29.3.1993.

8. Totally, four charges were framed against the first respondent as noted below:

Charge - 1: That the first respondent violated the procedure prescribed in code rules in calling for quotations for replacement of the Cooling Tower System of the Ice Plant at Portonovo.

Charge - 2: That the first respondent obtained a quotation on 15.4.1974 from Balamurugan Lathe Works, Cuddalore and produced it to the Fisheries Refrigeration Engineer with his letter dated 28.5.1974 unauthorisedly correcting the figures and interpolating the writing to the effect of raising the rate quoted from Rs.900/- to Rs.960/- with mala fide intention.

Charge - 3: That the first respondent accepted the quotation of Marine and Auto Diesel Centre which was totally bogus and failed to verify the bona fide of the company.

Charge - 4: That the first respondent carried out the fabrication and replacement of the Cooling Tower System of the Ice Plant at Portonovo at an expenditure of Rs.1,183.55 against Rs.290/- originally estimated by him without obtaining prior sanction and approval of the higher authorities with mala fide intention.

The first respondent has submitted his explanation. The Enquiry Officer observed that though the charge that the delinquent had not followed the procedure in obtaining the quotation is proved in general, such practice was prevalent and the charge could not be considered as a grave one and the charge is not maintainable and ultimately found that found all the four charges were not proved. However, the Disciplinary Authority / Commissioner of Fisheries considered the nature of charges framed against the first respondent, the defence statement and the findings of the Enquiry Officer, differed from the

view taken by the Enquiry Officer and found that the Charge Nos. 1 & 2 were proved. Charge No.3 was found not proved. Charge No.4 "... not pursued". In respect of the charges, which were held proved, the Disciplinary Authority/Commissioner of Fisheries Department found "that the offence committed do not deserve the extreme penalty of removal from service. Considering the fact that the delinquent officer was under the threat of removal from service, which had caused mental agony to him for years together, a punishment of stoppage of increment for one year with cumulative effect was imposed."

9. Aggrieved over the order of such punishment, the first respondent preferred O.A.No.3755 of 2001 before the Tamil Nadu Administrative Tribunal. Before the Tribunal, on behalf of the first respondent, it was urged that when the Enquiry Officer found that all charges were not proved, the Disciplinary Authority could not come to a different conclusion without giving an opportunity to the delinquent officer and giving reasons accepting that contention.

10. Placing reliance upon AIR 1998 SC 2713(Punjab National Bank and others vs. Kunj Behari Misra). the Tribunal has found:-
"... that the entire procedure adopted by the Disciplinary Authority is improper, illegal and therefore, the punishment order is set aside. The petitioner is entitled to all the monetary and service benefits including treating the period of the absence as duty. ..."
Thus, the punishment imposed on the first respondent is set aside with a direction that he is entitled to all the monetary and service benefits during the period from 23.12.1980 to 6.9.1992.

11. Aggrieved over the order of the Tribunal, the Department has preferred this Writ Petition to set aside the impugned order.

12. Assailing the order of the Tribunal, the learned Government Advocate has submitted that the findings of the Disciplinary Authority holding Charges 1 & 2 were proved, was not challenged by the delinquent officer. It was not taken note of by the Tribunal. The main contention urged on behalf of the Writ Petitioner/the State is that the first respondent in preferring appeal to the Government has categorically stated that he was not appealing against the imposition of punishment and that he was only praying for regularisation of service and for treating the period of service from 23.12.1980 to 6.9.1992 as on duty. The Tribunal has not properly appreciated the stand adopted by the first respondent in not challenging the propriety of the Disciplinary Proceedings nor the imposition of punishment and his conduct of acquiescence in the procedure adopted in the Departmental Proceedings.

13. We have carefully considered the submissions and perused the records.

14. In the de novo enquiry, the Enquiry Officer held all the four charges "not proved". The Disciplinary Authority/Commissioner of Fisheries differed from the findings of the Enquiry Officer and found that the Charges 1 & 2 were proved; Charge No.3 was not proved and Charge No.4 ".... not

pursued". On such proved charges, the first respondent was awarded the punishment of stoppage of increment for one year with cumulative effect.

15. When the Disciplinary Authority disagrees with the Enquiry Officer, then before recording its finding, the Disciplinary Authority should hear the delinquent officer was the contention put forth by the first respondent before the Tribunal. Reference was made to AIR 1998 Supreme Court 2713 where the Supreme Court has held that when the Inquiry Report is infavour of the delinquent officer but the Disciplinary Authority proposes to differ with such conclusions, then such Authority must offer him an opportunity of hearing. If the delinquent officer was not heard and that the Disciplinary Authority has recorded its findings, then there is violation of principles of natural justice. Applying the said decision, the Tribunal has allowed the O.A.

16. We are of the view that in the facts and circumstances of the case, the Tribunal has erred in applying the above decision in finding that there is violation of the principles of natural justice. The mere expression of grievance of violation of principles of natural justice is no ground to interfere with if upon the admitted facts it is found that the reasonable opportunity is afforded and no prejudice is being caused to the first respondent. We are of the view that the Disciplinary Proceedings and the punishment order cannot be set aside on the ground of violation of principles of natural justice.

17. By careful perusal of the proceedings of the Commissioner in Proceedings No.L3/36719/92-1 dated 26.10.1995, we find that the Enquiry Officer has submitted his report on 29.3.1993. Thereafter, a copy of the statement recorded during the enquiry and personal hearing along with the report of the Enquiry Officer's Report was furnished to the first respondent, in Memo No.L3/36719/92 dated 8.4.1993 to submit his final defence statement. The Enquiry Officer has found all the four charges not proved. When the Disciplinary Authority furnished a copy of the statement recorded during the enquiry and the report of the Enquiry Officer, the Disciplinary Authority has sufficiently indicated his mind of taking a different view from the finding of the Enquiry Officer. In fact, the first respondent himself has submitted his further explanation on 30.4.1993 before the Disciplinary Authority recorded its findings. Thus, obviously, the delinquent officer was afforded sufficient opportunity before the Disciplinary Authority recorded its finding in holding the Charges 1 & 2 were proved. The finding of the Tribunal that the departmental proceeding is vitiated due to non-hearing of the first respondent cannot be sustained.

18. After the conclusion of the proceedings, the imposition of the punishment viz., stoppage of increment for one year with cumulative effect, the delinquent officer has preferred appeal petition before the Government to reconsider his case sympathetically and pass orders. His appeal was confined only:-
(i) for regularisation of his service in the category of Junior Refrigeration Engineer with effect from 12.8.1966 with all benefits;
(ii) To treat the period of removal from service from 23.12.1980 to 6.9.1992

as on duty.
In his appeal before the Government, the first respondent has nowhere challenged the validity or the propriety of the Departmental Proceedings.

19. The Commissioner of Fisheries was consulted on the above. The Commissioner of Fisheries has expressed the view that there was dearth of hands in the Department and that the request of the first respondent for regularisation of service could be considered. Examining representation of the first respondent and views of the Commissioner of Fisheries, the Government regularised the service of the first respondent as Junior Refrigeration Engineer with effect from 12.8.1966, i. e. the date on which he was appointed as Junior Refrigeration Engineer in the Fisheries Department. However, the Government directed that the period from 23.12.1980 to 6.9.1992 as absent, during which he had not been in service, and that the first respondent was not entitled to draw any arrears of pay and allowances for the period of his absence from 23.12.1980 to 6.9.1992. As noted earlier, in his appeal before the Government requesting the Government to consider his case sympathetically, the first respondent has neither challenged the validity or the legality of the Disciplinary Proceedings nor the findings of the Disciplinary Authority. He has specifically indicated that he was not challenging the punishment of imposition of stoppage of increment for one year with cumulative effect. When the first respondent has so acquiesced in the Disciplinary Proceedings in his earlier representation, the Tribunal erred in finding that the Disciplinary Proceedings are vitiated and that there is violation of principles of natural justice.

20. By careful perusal of the records, we find that before recording its finding, the Disciplinary Authority has offered the first respondent the opportunity to submit his further explanation. Accordingly, the first respondent has also submitted his further explanation on 3 0.4.2003. In such circumstances, the impugned order of the Tribunal in setting aside the proceedings and the punishment order cannot be sustained. There are no inflexible rules of natural justice of universal application. Rules of natural justice cannot be imprisoned within the strait jacket rigid formulae. The rule of law behoves the Government to act fairly and reasonably. By perusal of the records, we find that both the disciplinary authority and the Government has afforded reasonable opportunity to the first respondent and at every stage, we find reasonableness and fair play.

21. On behalf of the first respondent, the main plea urged is to treat the period from 23.12.1980 to 6.9.1992 as on duty to enable him to claim salary and other service benefits. It is of course true that the orders of removal had been set aside due to some technical irregularities in the disciplinary proceedings and further enquiry had been held. The first respondent has been subsequently reinstated in service and minor punishment has been imposed. However, the first respondent himself is responsible to great extent as a Disciplinary Proceedings has been initiated on account of some misdemeanour committed by him. It is not disputed that the first respondent has already reached the age of superannuation and has retired from service in the mean time. This is not a case where the first respondent has been completely exonerated.

22. Having regard to all these aspects, with a view to balance the scales of justice, we think it appropriate to modify the order of the Tribunal and direct that the period from 23.12.1980 to 6.9.1992 shall be notionally treated as on duty as leave without pay and the first respondent shall not be entitled to any back wages for the said period. However, such period shall be treated as on duty for all other purposes, that is to say, for the purpose of continuity in service, seniority and increments and on that account if any amount is payable, such amount may be paid. Since such period would be considered for the purpose of seniority, if the first respondent is entitled for any other promotion on that basis, such promotion may be given on notional basis without giving any actual finance benefit for the promotional post. However, for the purpose of grant of pensionary benefits, such promotion, if any, and increments shall be taken into account. The order of the Tribunal is modified to the extent indicated and the Writ Petition is allowed in part. However, there is no order as to costs.

Index: Yes
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To

The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai 600 104.

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